

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON DIVISION

Stephanie Nicole Sanders,

Plaintiff,

vs.

Carroll, LLC and Jane Doe, a citizen and resident of Anderson County, individually and an agent of Carroll, LLC,

Defendant.

Civil Action No. _____

(*State Court Action No. 2020-CP-04-0591*)

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. § 1441 and § 1446, Defendant Carrols LLC (hereinafter “Carrols” or “Defendant”), improperly named as “Carroll, LLC,” hereby removes the above-styled matter, which was originally filed in the Court of Common Pleas, Tenth Judicial Circuit, Anderson County, South Carolina to the United States District Court for the District of South Carolina, Anderson Division, based upon the following grounds:

PRIOR PROCEEDINGS IN STATE COURT

1. Plaintiff Stephanie Nicole Sanders initiated this lawsuit by filing the Summons and Complaint in this action against “Carrol Corporation, LLC” and “Jane Doe, a citizen and resident of Anderson County, individually and an agent of Carroll Corporation, LLC,” on February 26, 2020 in the Court of Common Pleas, Tenth Judicial Circuit, Anderson County, South Carolina (C.A. No.: 2020-CP-04-0591) (“State Court Action”). A default was entered on or about August 3, 2020. On September 23, 2020, Carrols moved to set aside the default because the Complaint had not been properly served. A Consent Order Setting Aside the Default was entered January 21, 2021. An Amended Complaint was filed January 21, 2021. The Amended Complaint names

“Carroll LLC” and “Jane Doe, a citizen and resident of Anderson County, individually and an agent of Carroll, LLC” as defendants. Carrols accepted service of the Amended Complaint on January 21, 2021. Copies of all filings in the State Court Action, including the Summons and Complaint and Plaintiff’s Certificate of Service of the Summons and Complaint (collectively the “Pleadings”), are attached hereto as **Exhibit 1**.

2. Carrols was never served with the initial Summons and Complaint in the State Court Action. Carrols was first served with a copy of the Amended Summons and Complaint in the State Court Action on January 21, 2021.

3. As of the filing of this Notice of Removal, the time for filing responsive pleadings in the State Court Action has not expired. Furthermore, this Notice of Removal is being filed within thirty (30) days of the filing and service of the State Court Action.

4. Removal to this Court is proper pursuant to 28 U.S.C. §§ 1441(a) and 1446(a). Defendant files this Notice of Removal in the United States District Court for the District of South Carolina, which is the district court of the United States for the district embracing the state court where the State Court Action is pending.

5. Removal is timely, as Plaintiff served Defendant with a copy of the State Court Action on January 21, 2021. Defendant is filing this Notice of Removal with the United States District Court for the District of South Carolina on or before February 20, 2021, which is within 30 days after service upon Defendant of a copy of the initial pleading setting forth the claim for relief upon which this action is based. See 28 U.S.C. § 1446 (b).

ALL STATUTORY REQUIREMENTS FOR REMOVAL ARE MET

6. Jurisdiction in this Court is proper because this Court has diversity jurisdiction over this action pursuant to 28 U.S.C. § 1332 because (a) there is complete diversity of citizenship

between Plaintiff and Defendant, and (b) the total amount in controversy exceeds \$75,000, exclusive of interest and costs.

A. Complete Diversity of Citizenship Exists Between Plaintiff and Respondent.

7. Diversity of citizenship exists between Plaintiff and Defendants pursuant to 28 U.S.C. § 1332(a)(1), both at the time the initial Summons and Complaint was filed, the time Plaintiff filed the Amended Summons and Complaint, and at the time of this Removal.

8. At the time the Complaint and Amended Complaint were filed, and on the date of removal, Plaintiff was and is a resident of South Carolina. (**Exhibit 1**, Amended Complaint ¶1).

9. At the time the Complaint and Amended Complaint were filed, and at the time the Amended Complaint was served, and on the date of removal, Defendant was and is a limited liability company that is a wholly owned subsidiary of Carrols Corporation, which is a Delaware Corporation with a principal place of business in New York. Carrols Corporation is Carrols LLC's sole member, and Carrols LLC has no members who are South Carolina residents. Moreover, Carrols LLC is organized and existing under the laws of the state of Delaware and its principal place of business is in New York. Consequently, diversity jurisdiction exists.

10. Accordingly, on the date the initial Summons and Complaint were filed, on the date the Amended Summons and Complaint were filed, on the date Defendant was served with the Amended Summons and Complaint, and on the date of the Removal of this action, complete diversity of citizenship existed between Plaintiff and Defendant because Plaintiff was and is a citizen, resident, and domiciliary of a different state from Defendant within the meaning of 28 U.S.C. § 1332(a). Further, Defendant is not a resident of the forum state.

11. Moreover, the citizenship of "Jane Doe, a citizen and resident of Anderson County" is disregarded and immaterial because "the citizenship of defendants sued under fictitious names

shall be disregarded." 28 U.S.C. § 1441(b)(1). Thus, complete diversity of citizenship exists in this case.

B. The Amount in Controversy Exceeds \$75,000, Exclusive of Interest and Costs.

12. In this lawsuit, Plaintiff seeks damages from Defendant and alleges that Defendant was willful, wanton, reckless, grossly negligent, and negligent. **Exhibit 1**, Complaint at ¶6. Plaintiff alleges that, as a result of said conduct, Plaintiff suffered serious, severe and permanent injuries to her right knee and ankle" and that "such injuries caused the Plaintiff to suffer extreme pain and suffering and to incur numerous medical expenses." *Id.* Plaintiff requests actual damages and punitive damages. *Id.* Therefore, the amount in controversy exceeds \$75,000, excluding interest and costs, as required by 28 U.S.C. § 1332(a).

C. Removal is Timely.

12. This Notice of Removal is timely under 28 U.S.C. § 1446. This Notice of Removal is filed within 30 days of service of the State Court Action upon Carrols, and within one year of the commencement of the action, so that it is timely filed under 28 U.S.C. § 1446. *See also Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344 (1999).

D. The United States District Court for the District of South Carolina, Anderson Division, Has Jurisdiction of this Case, and it is the Proper Forum and Venue for It.

13. The State Court Action was commenced within the judicial district of the United States District Court for the District of South Carolina. Furthermore, the State Court Action was commenced in Anderson County, South Carolina, which is located within the Anderson Division of the United States District Court for the District of South Carolina.

14. Accordingly, this Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332, and the action is properly subject to removal to this Court pursuant to 28 U.S.C. § 1441.

15. Carrols filing this Notice of Removal is the only defendant in this case that has been properly joined and served, thereby satisfying the requirement that all defendants consent to the removal. *See* 28 U.S.C. 1446(b)(1).

16. All procedural and statutory requirements for removal have been met.

17. This Notice of Removal is signed pursuant to Rule 11 of the Federal Rules of Civil Procedure.

Respectfully Submitted,

HAYNSWORTH SINKLER BOYD, P.A.

By: *s/Denny P. Major*

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